

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
Civil Action No. 4:22-cv-10

FREDERICK BEST, CAROLYN )  
SHAW, and JOSEPH CARROLL, )  
 )  
Plaintiffs, )

v. )

BARRY STANLEY, in his individual )  
capacity as a Chief of Police for the )  
City of Ayden; )  
OFFICER CHARLES PAGE, in his )  
individual and official capacities; and )  
UNKNOWN MEMBERS OF THE )  
AYDEN POLICE DEPARTMENT, )  
in their individual and official )  
capacities; )  
Defendants. )

**NOTICE OF REMOVAL**

Defendant OFFICER CHARLES PAGE, in his official capacity, by and through his undersigned attorneys, petition this Court for the removal of this matter from the Superior Court of Pitt County, North Carolina, to the United States District Court for the Eastern District of North Carolina.

Defendant respectfully submits the following grounds in support of removal:

1. On or about January 4, 2022, the plaintiff filed several documents, including a civil complaint, in the Pitt County Superior Court. The Complaint was entitled FREDERICK BEST, CAROLYN SHAW, and JOSEPH CARROLL, Plaintiffs, versus BARRY STANLEY, in his individual capacity as a Chief of Police for the City of Ayden;

OFFICER C. PAGE, in his individual and official capacities; and UNKNOWN MEMBERS OF THE AYDEN POLICE DEPARTMENT, in their individual and official capacities; Defendants, Civil Action No. 22 CVS 18. *See* Exhibit 1, Court Pleadings. The other documents included a summons for each defendant. A copy of the Summons in Defendants' possession is included in Exhibit 1 with the Court pleadings.

2. Summonses were purportedly served on Barry Stanley, in his official capacity as Chief of Police for the City of Ayden on January 4, 2022; on Officer Charles Page, in his official capacity, on January 4, 2022; and on Unknown Members of the Police Department, in their official capacities, on January 4, 2022, by certified mail, return receipt requested, to Matthew Livingston as Town Manager of the Town of Ayden. Officer Charles Page, in his individual capacity, has not been served. Former Chief of Police Barry Stanley is deceased and cannot become a party in any capacity. A summary of service information from the Court and copy of the mailings addressed to Matthew Livingston is attached as Exhibit 2. The Defendant has thirty days from the date of service on any Defendant to remove this matter, pursuant to 28 U.S.C. § 1446(b)(1). Accordingly, this removal is timely, because it is within 30 days of purported service on the official-capacity Defendants, on January 7, 2022.

3. This Court has removal jurisdiction over this case because this is a civil action with original jurisdiction in the federal courts, pursuant to 28 U.S.C. §§ 1331 and 1441(a). Plaintiff brings claims against Defendants under 42 U.S.C. § 1983, alleging violations of rights protected by Fourteenth Amendment to the United States Constitution, among other sources of law. These are claims “arising under the Constitution, laws, or

treaties of the United States,” over which the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiff has also brought state-law tort claims based upon the same case or controversy, which are within the supplemental jurisdiction of this court under 28 U.S.C. § 1367.

4. This Court is the proper venue for removal of this action under 28 U.S.C. § 1446(a), because it is located in the District where the State Court action was pending.

5. Documents associated with Case No. 22 CVS 18, of which this Defendant is in possession, are attached hereto as Exhibit 1.

6. A copy of this Notice of Removal will be filed with the Clerk of Court for the Superior Court of Pitt County, North Carolina, and served on Plaintiff. A copy of said Notice of Removal to Federal Court is attached as Exhibit 3 to this Petition.

7. Officer Charles Page has been consulted in his individual capacity, and consents to the removal of this action.

8. Former Police Chief Barry Stanley in his individual and official capacities is deceased and therefore cannot be a defendant or give consent to removal.

9. Counsel for Unknown Members of the Ayden Police Department have been have not been named and cannot consent to the removal of this action.

WHEREFORE, the Petitioner respectfully requests that the above action now pending in the Superior Court of Pitt County, North Carolina, General Court of Justice, be removed to this Court.

This the 4th day of February, 2022.

**HARTZOG LAW GROUP LLP**

*s/ Katherine Barber-Jones*

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*Attorneys for Defendants*

### **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on February 4, 2022, I electronically filed the foregoing using the Court's CM/ECF system. The foregoing was served on the following parties by U.S. Mail

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This is the 4<sup>th</sup> day of February, 2022.

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